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January 18, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

<u>Via Hand Delivery</u>

William E. Kennard, General Counsel
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614B
Washington, D.C. 20554

Re: Female-Owned Status of Gulf Telephone Company

Dear Mr. Kennard:

Gulf Telephone Company ("GTC") is a wholly owned subsidiary of Gulf Coast Services, Inc. ("GCS"). Both GTC and GCS have identical officers and boards of directors and GTC and GCS file a common tax return each year. For ease of understanding, hereinafter we will refer to both GTC and GCS collectively as the "Company."

The Company, by its attorneys, requests a letter ruling to clarify that:

1. An option granted in 1993 to the Company's Employee Stock Ownership Plan ("ESOP") to acquire control of the Company, a female-owned entity, upon the death of the female owner would not now cause the female owner to lose female preferences for the purposes of competitive bidding on the entrepreneurial blocks for broadband Personal Communications Service ("broadband PCS") because the option held by the ESOP does not deprive the female owner of the Company of her investment or control of the Company; and

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2. Although the Company ESOP will soon hold approximately 41% of the Company's voting stock, the Commission still considers the Company to be a female-owned and controlled entity because:

(a) The female owner of the Company controls the ESOP; or if she does not,

(b) The shares held by the ESOP are actually owned by the individual vested employees, thus making the shares widely dispersed with no individual vested employee owning 5% or more of the Company's stock.

It is our understanding that the Commission has authority to provide the ruling requested in paragraph 1 under the Fifth Report and Order, Implementation of Section 309(j) of the Communications Act, Competitive Bidding ("Fifth Report and Order"), PP Docket No. 93-253, 9 FCC Rcd 5532 (1994), note 159. According to note 159, the Commission

> will consider departing from the requirement that the equity of investors in minority and women-owned businesses must be calculated on a fully diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and women principals of a substantial stake in the venture or impair their rights to control the designated entity.

In addition, the Commission has general administrative authority to issue the ruling requested in paragraph 2.

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In order to help you better understand why the Company seeks these letter rulings, a brief history of the Company is in order. In 1970, John Snook acquired control of the Company. Over the next two decades, the Company prospered and experienced substantial growth. During this time, John met and married one of the Company's employees, Marjorie. John and Marjorie Snook had no children.

Before his death in mid-1994, John created an inter vivos trust and a testamentary trust on December 23, 1993, hereinafter referred to as Trust 1 and Trust 2. Pursuant to John's instructions, the trusts would hold the majority of the Company's stock for the sole benefit of Marjorie. The Company has only one class of stock, voting common stock.

John also organized the Company ESOP which, over a period of many years, would have the ability to acquire control of the

Company through the purchase of the Company stock, but only after both he and Marjorie were deceased.

For the purposes of this letter, we will assume that Trust 2 has been funded, something that is expected to occur very soon. We will also assume that the amount of Company stock held by the ESOP will increase from approximately 26% to approximately 41%, something that is also expected to occur very soon. Therefore, under John's will and the inter vivos trust, approximately 27% of the Company's stock has been placed in Trust 1; 31% of the Company's stock has been placed in Trust 2. Both trusts are for the sole benefit of Marjorie. Marjorie, as trustee of both trusts, has the sole right to elect all of the members of the Company Board of Directors. Further, Marjorie controls, through the Board of Directors, the appointment of all of the officers of Company and the operations of the Company.

The Snook family attorney, Mr. Lyman Holland, Jr., is co-trustee of each trust, but has been given severely limited powers. These powers are no more than the normal types of supermajority voting powers that the Commission has found acceptable in its <u>Fifth Memorandum Opinion and Order, Implementation of Section 309(j) of the Communications Act--Competitive Bidding</u> ("<u>Fifth MO&O</u>"), PP Docket No. 93-253, FCC 94-285 (November 23, 1994), at ¶ 81. Mr. Holland has no authority to elect or remove any officers, directors or agents of the Company. Therefore, as a practical matter, Marjorie holds and controls 58% of the Company's stock, giving her both <u>de jure</u> and <u>de facto</u> control of the Company and ownership of a majority of the shares of the Company's stock.

While Marjorie holds 58% of the Company's stock, the ESOP holds 41% of the Company's stock. (Members of the Company Board of Directors hold the remaining 1%.) In order for the ESOP to ultimately gain control of the Company after Marjorie's death, John granted to the ESOP an option to purchase additional stock. However, under the option, the ESOP has no right to acquire control of the Company during Marjorie's lifetime, unless Marjorie consents in writing. Further, the ESOP trustees must consent to the acquisition of additional stock.

In sum, the ESOP currently holds 41% of the Company's stock with a current option to acquire up to something less than 49% of the stock during Marjorie's lifetime. Upon Marjorie's death, the ESOP has an option to purchase enough stock to acquire control of the Company, but only if the purchase of the additional stock is approved by the ESOP trustees. This option was granted on December 23, 1993, prior to the adoption of any auction rules by the Commission.

The Company respectfully requests a letter ruling that the Company will not now be deprived of female preferences for purposes of competitive bidding on the entrepreneurial blocks for broadband PCS despite the fact that the ESOP has an option to acquire control of the Company upon Marjorie's death. As allowed under note 159 of the Fifth Report and Order, the Company has shown that the option granted to the ESOP will not deprive the female principal of the Company, Marjorie, of her substantial financial stake in the Company or impair her right to control the Company. Therefore, the Company asks that the requirement that the equity of investors be calculated on a fully diluted basis be waived in the instant case. Marjorie is clearly the majority shareholder of the Company and controls the Company in all respects. The Company ESOP has no right whatsoever to acquire majority ownership and control of the Company until Marjorie's death, and then only after it obtains approval from its trustees. Further, it is not known whether the ESOP will even exercise this option once it has the opportunity to do so.

As a practical matter, it is imperative that the Commission not consider options like the one granted to the ESOP as fully exercised. Otherwise, the Commission will be forced to examine every testamentary option, inter vivos option and will of every designated entity to determine whether the entity would still qualify as a designated entity when one of its principals dies. If no will exists, the Commission would be forced to examine the intestate succession of a designated entity's holdings to determine if, upon death of a principal, the entity would still be considered a designated entity. Such tasks are impracticable at best and would be an extreme waste of the resources of the Commission and the designated entities.

Failure to clarify that the ESOP option should not be calculated on a fully exercised basis would prevent the Company--an entity that is clearly owned and controlled by a woman--from competing as such during the upcoming PCS auctions. It particularly fails to make sense in the case of the Company to calculate the ESOP option on a fully exercised basis due to the fact that Marjorie is in her late fifties, in good health and has a life expectancy of more than 20 years--twice the length of a ten-year PCS license.

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As noted, the Company requests a second letter ruling that, although the ESOP holds 41% of the voting stock and has the present option to own up to something less than 49% of the voting stock, the Commission still considers the Company to be a female-owned and controlled entity because Marjorie controls the ESOP. Alternatively, the Company seeks a letter ruling that, although the ESOP holds 41% of the voting stock, the Commission still considers the Company to be a female-owned and controlled entity because the shares held by the ESOP are actually owned by the individual vested employees, thus making the shares widely dispersed; further, no individual vested employee owns 5% or more of the stock.

Under the Fifth MO&O, the Commission defines a business owned by women as an entity that has a control group composed of women who are United States citizens and the control group has voting control (i.e., 50.1% of the vote). Fifth MO&O, at ¶ 66. The female principals of the control group must hold at least 30% of the total equity in the entity (as well as 50.1% of the voting stock); 20.1% may be held by investors who are not women, provided that all other investors hold passive interests (which includes up to 25% of the voting stock, in the case of corporations). Id. at ¶¶ 59, 65. The Company is concerned that the Commission may view the stock held by the ESOP as a violation of the requirement that an investor who is not part of the control group not hold more than 25% of the voting stock. As discussed below, the Company is convinced that it does not violate this provision.

As noted, the ESOP holds 41% of the voting stock and has a present option to own up to something less than 49%. The four ESOP trustees, who happen to be women, vote the stock on behalf of the ESOP. Marjorie controls the ESOP through her control of the appointment of the administrative committee, which directs the ESOP trustees who vote the stock (except for supermajority situations where each individual employee votes his or her own stock). Thus, as a practical matter, the 41% of the voting stock held by the ESOP is controlled by Marjorie.

In sum, Marjorie holds 58% of the Company's voting stock through Trust 1 and Trust 2. Further, Marjorie ultimately controls the company through (i) her direct ability to vote 58% of the stock; (ii) her positions as the Company President and Chairperson of the Board of Directors; (iii) her ability to appoint the members of the Board of Directors and the officers of the company; and (iv) her ability to control 41% of the Company's stock that is held by the ESOP. Thus, except for supermajority situations, Marjorie controls 99% of the Company's voting stock. Therefore, the Company believes that there is no violation of the requirement under the Fifth MO&O that an investor who is not part of the control group hold no more than 25% of the voting stock.

Alternatively, the Company asks the Commission to rule that the stock held by the ESOP is widely dispersed. Literally speaking, the stock held by the ESOP is owned by the employees who are vested members of the ESOP. None of the vested employees owns 5% or more of the stock through the ESOP. In supermajority situations when the employees vote the stock, they vote individually and not as a block. Therefore, none of the employees would violate the requirement that an investor who is not part of the control group hold no more than 25% of the voting stock.

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The Company is one of the relatively few female-owned and controlled communications companies in the United States. The Commission has a history of promoting businesses like the Company. Surely the Commission did not contemplate preventing an entity that is clearly owned and controlled by a woman from being eligible to compete as such during the PCS auctions. By providing the Company with a letter ruling that it falls within the Commission's definition of a female entity, the Commission will further its policy of promoting female-owned and controlled communications companies and will give the Company, an entity clearly owned and controlled by a woman, an opportunity to compete in the upcoming broadband PCS auctions.

Because of the February 28, 1995 deadline for filing FCC Form 175 and the need to negotiate joint venture arrangements prior to the filing date, expedited action is respectfully requested. Please feel free to contact the undersigned if you have any questions or need more information regarding this matter. We look forward to hearing from you.

Respectfully submitted,
GULF TELEPHONE COMPANY

By: ______________________
Eliot J. Greenwald
Howard C. Griboff
Kevin M. Walsh

Its Attorneys

cc: Sara F. Seidman, Esq.
Ms. Marjorie Snook